IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1337 OF 2006
AND
CIVIL APPLICATION NO.1338 OF 2006
IN
WRIT PETITON NO.2712 OF 1996

The Municipal Corporation of Gr.Bombay ..Applicant.

V/s.

The General Secretary, B.E.S.T. Workers Union & Ors. ..Respondents.

Mr.H.Toor i/b. Crawford Bayley & Co. for applicant.

Mr.A.S.Rao for respondent No.2.

CORAM : V.C.DAGA, J.

DATED : 3RD MAY, 2006.

P.C. :-

Heard rival parties. There was a conditional order passed by the learned Single Judge (Smt.N.M. Mhatre, J.) dated 11th August, 2004; whereby failure on the part of the petitioner was to result in the dismissal of the petition without reference to the Court.

2. Since there was failure on the part of the petitioner, to serve the unserved respondent, the petition was treated as dismissed on the basis of the self operative order dated 11/8/2004.

3. Thereafter, it appears that the petitioner had

taken out two Civil Applications, one bearing Civil Application No.2837 of 2004 and the other Civil Application No.2838 of 2004. The applications were for setting aside the order of dismissal of the application followed by prayer for condonation of delay. Both these applications came to be allowed by two separate orders both dated 4th February, 2005. In the result, application for restoration was allowed, delay in filing the restoration application came to be condoned. Petition was restored to file.

4. After the aforesaid orders were passed, the petitioner came to know about the death of the respondent No.2 on 17/11/2004.

5. This fact of death of respondent No.2 was communicated to the petitioner by the widow of the respondent No.2 vide her letter dated 28th February, 2005. Consequently, the petitioner moved two applications, one for substitution and another for condonation of delay. The said applications were, obviously, not maintainable in view of the fact that on the date when the petition was dismissed and subsequently, it was restored, the respondent No.2 was already dead. In other words, the orders dated 4th February, 2005 passed in Civil Application No.2837 of 2004 and Civil Application No.2838 of 2004 were against

dead person. In this view of the matter, learned counsel for the petitioner did not press these applications. With the result, the same were dismissed as not pressed with no order as to costs.

6. So far as the present application bearing C.A. No.1337 of 2006 followed by another C.A.No.1338 of 2006 are concerned, one is for setting aside the orders passed by the learned Single Judge on 11th August, 2004 since they were against dead person with a prayer to pass fresh order recalling order dismissing petition, another prayer is to bring the legal heirs of the deceased respondent No.2 on record. The second application is for condonation of delay in filing the Civil application for restoration of petition and also for bringing the legal heirs of the deceased respondent No.2 on record.

7. Heard rival parties with respect to both applications. The respondents have no objection for allowing this applications. Consequently, both the applications are allowed in terms of prayer clauses incorporated therein.

7. Petition stands restored. The prayer to substitute the name of respondent No.2 after condoning delay, if any, is granted. Petitioner to carry out

necessary amendment in the petition within 3 days from today.

****